

AMENDMENT TO RESOLUTION 05-02-05

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 366.2 to read as follows:

- 1 §366.2
2 (a) If a person against whom an action may be brought on a liability of the person, whether
3 arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration
4 of the applicable limitations period, and the cause of action survives, an action may be commenced
5 within one year after the date of death, and the limitations period that would have been applicable
6 does not apply.
7 (b) The limitations period provided in this section for commencement of an action shall not be
8 tolled or extended for any reason except as provided in any of the following, where applicable.
9 (1) Part 4 (commencing with Section 9000) of Division 7 of the Probate Code (creditor claims
10 in administration of estates of decedents).
11 (2) Part 8 (commencing with Section 19000) of Probate Code (payment of claims, debts, and
12 expenses from revocable trust of deceased settlor).
13 (3) Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest
14 clauses)
15 (4)(c) The calculation of the time period shall be as provided by Sections 12, 12a and 12b of
16 the Code of Civil Procedure.
17 ~~(c)(d)~~ This section applies to actions brought on liabilities of persons dying on or after
18 January 1, 1993.

(Proposed new language underlined; language to be deleted stricken.)

RESOLUTION 05-02-05

DIGEST

Decedent's Estates: Clarification of Time for Filing Action

Amends Code of Civil Procedure section 366.2 to clarify the time limit for filing an action against a decedent's estate if the last day falls on a weekend or holiday.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Similar to Resolution 05-03-05.

Reasons:

This resolution amends Code of Civil Procedure section 366.2 to clarify the time limit for filing an action against a decedent's estate if the last day falls on a weekend or holiday. The resolution should be disapproved because it attempts to distinguish the statute of limitations against decedent's estates from other statutes of limitations, which is unnecessary.

Chapters 1 through 6 of Title 2 of Part 2 of the Code of Civil Procedure (covering sections 312 through 366.3) address the time periods for filing various actions (ie. general, real property, professional negligence and claims against decedent's estates). None of the sections in chapters 1 through 5 states that the calculation of time shall be according to Code of Civil Procedure sections 12 through 12(b), but these latter two sections are routinely applied to extend the limitations periods contained in those chapters. See, e.g., *DeLeon v. Bay Area Rapid Transit District* (1983) 33 Cal.3d 456, 460-461. There is no reason to assume that sections 12 through 12b, extending the limitations periods in chapters 1 through 5 when the last day falls on a weekend or court holiday, would not also apply to the limitation periods in chapter 6, including section 366.2.

SECTION/COMMITTEE REPORTS

TRUSTS & ESTATES COMMITTEE RECOMMENDATION

DISAPPROVE

Civil Code Sections, 12, 12a and 12b clearly apply to "any act" provided for or required by law and thus to Sections 366.2 and 366.3. Thus, this resolution is unnecessary.

This position is only that of the Trusts and Estates Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Trusts and Estates Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 366.2 to read as follows:

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- 5 within one year after the date of death, and the limitations period that would have been applicable
- 6 does not apply.
- 7 (b) The limitations period provided in this section for commencement of an action shall not be
- 8 tolled or extended for any reason except as provided in any of the following, where applicable.

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10 in administration of estates of decedents).
11 (2) Part 8 (commencing with Section 19000) of Probate Code (payment of claims, debts, and
12 expenses from revocable trust of deceased settlor).
13 (3) Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest
14 clauses)
15 (c) The calculation of the time period shall be as provided by Sections 12, 12a and 12b of the
16 Code of Civil Procedure.
17 ~~(e)~~(d) This section applies to actions brought on liabilities of persons dying on or after
18 January 1, 1993.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: The current one-year statute deals with claims made against an estate or the decedent when the cause of action survives the death of a person who dies before the end of an applicable time period within which the action may be brought. The statute seems to not include CCP sections 12, 12a and 12b that extend the statute of limitations if it lands on a non-Court day.

This Resolution: This would clarify that the statute is to be extended if the one year lands on a Saturday, Sunday or holiday when the Court is closed.

The Problem: If not corrected, this statute dealing with claims made against an estate or the decedent presents a trap for the unwary. Every other period of limitations at the trial and appellate levels provide for an extension of time through and including the next court day. The resolution would be to add a new subsection (c) to provide that such an extension will exist.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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